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13 *Attorneys for Defendant*  
14 *Yahoo! Inc.*

15  
16 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN JOSE DIVISION**

18  
19  
20 IN RE: YAHOO! CUSTOMER DATA  
21 SECURITY BREACH LITIGATION

22 } Case No. 16-MD-02752-LHK  
23 }  
24 } STIPULATED [PROPOSED]  
25 } ORDER UNDER FEDERAL  
26 } RULES OF EVIDENCE 502(d)  
27 } AND (e)  
28 }

1           **1.     PURPOSE**

2           This Order under Federal Rules of Evidence 502(d) and (e) reflects the  
3 Parties' agreement to protect certain privileged and otherwise protected  
4 documents, data (including electronically stored information) and other  
5 information, including without limitation, metadata (collectively,  
6 "Document(s)") against claims of waiver.

7           **2.     CLAWBACK NOTICE**

8           In the event that a producing party claims that it inadvertently produced  
9 Documents subject to a legally recognized claim of privilege or work-product  
10 protection, it shall provide written notice of the claim to the receiving party (a  
11 "Clawback Notice"), identifying the subject Documents.

12           **3.     COVERED DOCUMENTS**

13           (a)     For purposes of this Order, "Covered Documents"  
14                   include:

15                   (i)     Documents specified in a Clawback Notice that  
16                           were produced fewer than thirty (30) days prior  
17                           to receipt of the Clawback Notice by the  
18                           receiving party; and

19                   (ii)    Documents specified in the Clawback Notice  
20                           up to 5% of the Documents in the production to  
21                           which the Clawback Notice relates.

22           (b)     The producing party is not obligated to provide any  
23                   explanation or evidence regarding the reasonableness  
24                   of efforts taken to prevent the production of Covered  
25                   Documents.

26           (c)     The production of any Covered Document shall not  
27                   result in the waiver of any privilege or other  
28                   protection (including, without limitation, the attorney-

client privilege, the work-product doctrine, the joint defense privilege, or other applicable privilege) associated with such Document as to the receiving party or any third parties, and shall not result in any waiver, including subject matter waiver, of any kind, in this or in any other state or federal proceeding.

This Paragraph shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d) with regard to Covered Documents.

4. **NON-COVERED DOCUMENTS**

- (a) With respect to Documents specified in a Clawback Notice that are not Covered Documents under this Order (“Non-Covered Documents”), Federal Rule of Evidence 502(b) shall apply.
- (b) With respect to Non-Covered Documents, a Clawback Notice must describe the steps taken to prevent production of the specified Documents, and the steps taken to rectify the production of the Documents, to enable the receiving party to make a reasoned decision as to whether it wishes to challenge the reasonableness and/or timeliness of such steps.

5. **PROCEDURES FOLLOWING CLAWBACK NOTICE**

- (a) Upon receipt of a Clawback Notice (regardless of whether the receiving party agrees with the producing party’s claim of privilege) or upon determining that information it received is privileged or work-product-protected, the receiving party must make reasonable efforts to promptly return, sequester, and/or destroy

1 the Document(s), all copies thereof, and any notes that  
2 reproduce, copy, or otherwise disclose the substance  
3 of the information for which privilege is claimed, and  
4 notify the producing party when this is complete.

5 (b) If a receiving party challenges a claim that a  
6 Document specified in a Clawback Notice is  
7 privileged or work-product-protected, the receiving  
8 party shall notify the producing party of its positions  
9 within 14 days of receiving the Clawback Notice  
10 asserting the claim. Within 14 days of the producing  
11 party receiving notification of the dispute, the parties  
12 shall meet and confer in an effort to resolve their  
13 disagreement. If the parties are unable to resolve their  
14 disagreement, the parties may submit the issue to the  
15 Court for a determination, and may submit the  
16 document(s) at issue for in camera review.

17 (c) If a receiving party challenges a Clawback Notice  
18 pertaining to a Non-Covered Document on the ground  
19 that the production of the Document was not  
20 inadvertent by the producing party, that the producing  
21 party did not take reasonable steps to prevent the  
22 production of the Document, or that the producing  
23 party did not take reasonable or timely steps to rectify  
24 the production of the Document, the receiving party  
25 shall notify the producing party of its positions within  
26 14 days of receiving the Clawback Notice. Within 14  
27 days of the producing party receiving notification of  
28 the dispute, the parties shall meet and confer in an

1 effort to resolve their disagreement. If the parties are  
2 unable to resolve their disagreement, the parties may  
3 submit the issue to the Court for a determination, and  
4 may submit the document(s) at issue for in camera  
5 review.

6 6. **DOCUMENTS NOT REVIEWED FOR PRIVILEGE**  
7 **FOR BURDEN MINIMIZATION OR EFFICIENCY**  
8 **(“QUICK PEEK”)**

9 In the event that a producing party notifies a receiving party that it  
10 desires to produce Documents without having reviewed the Documents for  
11 privilege or work-product protection (“Quick Peek Production”), the parties  
12 will negotiate separate parameters for such productions and their related  
13 privilege protections. The provisions of Paragraph 3 of this Order will not  
14 apply to Quick Peek Productions. However, this Order shall apply to Quick  
15 Peek Productions to the extent that any privilege or protection is not waived in  
16 any other federal or state proceeding by disclosure in a Quick Peek Production.

16 7. **PROHIBITION ON USE OF PRIVILEGED**  
17 **INFORMATION**

18 To the extent any party is aware that it has obtained, or it is reasonably  
19 apparent that the party has obtained, privileged or work-product-protected  
20 information through production, disclosure, or communications, such  
21 information may not be submitted to the Court (except in connection with a  
22 challenge of the privilege assertion) or presented for admission into evidence or  
23 sought in discovery in this proceeding or in any other proceeding or action.  
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1 **IT IS SO STIPULATED**, through Counsel of Record.

2  
3 DATED: March 27, 2017

**MORGAN & MORGAN**

4 By: /s/ John Yanchunis  
5 John Yanchunis  
6 Plaintiffs' Lead Counsel

7  
8 DATED: March 27, 2017

**HUNTON & WILLIAMS LLP**

9 By: /s/ Ann Marie Mortimer  
10 Ann Marie Mortimer  
11 Attorneys for Defendant  
12 Yahoo! Inc.

**ATTESTATION**

13 I hereby attest that each of the other signatories concurs in the filing of this  
14 document.

15 DATED: March 27, 2017

**MORGAN & MORGAN**

16 By: /s/ John Yanchunis  
17 John Yanchunis  
18 Plaintiffs' Lead Counsel

19  
20 **IT IS SO ORDERED** that the foregoing Agreement is approved.

21  
22 DATED: \_\_\_\_\_

\_\_\_\_\_  
23 United States Magistrate Judge  
24 Nathaneal M. Cousins  
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26  
27  
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